

## ON-PREMISE TERMS AND CONDITIONS

Date of Last Revision: June 14, 2019

In consideration for the payment of fees set forth in the Quotation that references and incorporates these On-Premise Terms and Conditions (collectively, the "Agreement"), and subject to the terms and conditions of this Agreement, the parties agree as follows:

### 1. DEFINITIONS.

As used in this Agreement, the following defined terms will apply:

"Add-on Modules" means the optional modules You may purchase which work in conjunction with the Server Program to provide additional or enhanced functionality to the EFT Software.

"Administrator Interface" means a console which allows the administrator to manage the use of the EFT Software.

"Affiliates" means any entity that controls, is controlled by, or is under common control with, a party, where "control" means the power, directly or indirectly, either to (i) vote more than 50% of the capital stock or ownership interests having ordinary voting power for the election of directors of such entity, or (ii) direct or in effect cause the direction of the management and general activities of such entity whether by contract or otherwise, but in each case only for so long as such ownership or control continues.

"Authorized User" means Your employee or agent for whom You have set up a user account.

"CAL Basis" means a client access license which entitles an Authorized User to access a particular Add-On Module and is subject to the obligations set forth in Section 2.2(c)(ii).

"Concurrent Basis" means a license that entitles a certain specified number of Your Authorized Users to access the particular Add-On Module simultaneously.

"Daemon" means a computer program that runs as a background process, rather than being under the direct control of the user.

"Documentation" means any electronic or printed media, materials, or documentation provided with the EFT Software.

"EFT Software" means the object code version of computer program known as Enhanced File Transfer Server (including Standard and Enterprise editions), and related Documentation, owned, developed or licensed by Globalscape as specified in the Quotation, and delivered or made available to You by Globalscape under this Agreement, including the Server Program, the Administrator Interface, the Add-On Modules purchased by You, and any related updates, upgrades, supplemental code or components provided or made available to You by Globalscape.

"EFT Site" means a single partition of the Server Program that is attached to a specific IP address or multiple IP addresses and a combination of ports permitting You to segregate the incoming connections (and other activities) within the EFT Software based on network associations (adaptor/IP/ports) such as segregating internal from external users.

"Evaluation Period" means a thirty (30) day period during which You may access and use the EFT Software at no charge solely for testing, demonstration and/or evaluation purposes.

"Globalscape", "we" or "our" means GlobalSCAPE, Inc.

# GLOBALSCAPE

“Instance” means a single copy of the EFT Software loaded into an operating system’s memory, regardless of whether that operating system is running on a single physical computer, a virtual machine, container, or other abstraction.

“Invoice” means the invoice issued by Globalscape, in the form of a digital or physical sales receipt or similar document, which states the EFT Software or services purchased by You under this Agreement and the applicable fees.

“License Term” means the duration of the EFT Software license as set forth in the Quotation, which may be for a limited period of time or Perpetual.

“M&S Plan” means the maintenance and support agreement or plan, if purchased by You or to which you are otherwise entitled, pursuant to which Globalscape is obligated to provide EFT Software updates and upgrades and access to support services.

“Perpetual” means the EFT Software is licensed in perpetuity, unless terminated as a result of Your breach or as otherwise specified in the Agreement or the Quotation.

“Quotation” means the ordering document or statement specifying the details of the EFT Software license and/or services to be provided by Globalscape and purchased by You, including, without limitation, Add-On Modules, if any, applicable fees, number of Instances licensed, number of Authorized Users, the volume of use or data permitted, the EFT Software License Term, the applicable M&S Plan, any services to be performed by Globalscape which may be set forth in one or more statements of work, and other terms to which the parties may agree.

“Server License” will mean a license for a single Instance which may be used by You. A Server License is not limited to a specific number of Authorized Users.

“Server Program” means the Daemon portion of the EFT Software.

“You” and/or “Customer” means the individual accepting this Agreement or the entity for which such individual is accepting this Agreement.

## **2. License Grant.**

2.1 Evaluation License. If You have ordered an EFT Software evaluation (“Evaluation”), as set forth in an executed Quotation, then subject to the terms and conditions of this Agreement Globalscape hereby grants to You a non-exclusive, limited, revocable, non-transferable and non-sublicenseable license, at no charge, to the EFT Software solely for Your internal testing, demonstration or evaluation purposes during the Evaluation Period. Your Evaluation Period begins on the day the EFT Software is made available to You. Upon termination or expiration of the Evaluation Period, Your rights to access and use the EFT Software will terminate and You must pay the agreed upon fees to continue having a license to the EFT Software.

2.2 EFT Software License. If You have ordered an EFT Software license, then subject to the terms and conditions of this Agreement Globalscape grants to You a non-exclusive, revocable, non-transferable and non-sublicenseable license to use the EFT Software specified in the Quotation only: (a) during the relevant License Term specified in the Quotation, (b) internally for Your own internal purposes and not for resale or license to third parties, (c) by the number of Authorized Users specified in the Quotation, and (d) in accordance with the additional rights and limitations set forth below in this Section 2.2 and in the Quotation. Other rights, terms and restrictions specified in the Quotation are incorporated by reference into this Section 2.2.

(a) Server Program. For Perpetual EFT Software License Term, You may install and/or use one copy of the EFT Software’s Server Program on that number of Instances for which You have purchased a Server License. You agree You are subject to the terms of this Agreement even if installation occurs in an automated fashion.

(b) Administrator Interface. For so long as You have an active license to use the EFT Software, You may copy, install and use the EFT Software’s Administrator Interface on as many personal desktop computers as You wish.

(c) Optional Add-On Modules. Add-on Modules are subject to the following licensing terms:

(i) Standard Add-On Module License Terms

(1) **ADVANCED WORKFLOW ENGINE**. If You have purchased a Server License for the Advanced Workflow Engine Add-On Module ("AWE Module"), You may use one copy of the AWE Module on that number of Instances for which You have purchased such a license as indicated in Your Quotation. You may not utilize the AWE Module independently from Your use of the Server Program for the EFT Software and You must have a Server License for the AWE Module for each Instance of the Server Program with which You use the AWE Module. Certain consents required to be obtained from Globalscape pursuant to this Agreement may also require the consent of Network Automation, Inc. ("NAI"). You acknowledge that You have only the limited, non-exclusive right to use and copy the AWE Module as expressly stated in this Agreement and that Globalscape and/or NAI, as the case may be, retains title to the Software and all other rights not expressly granted herein.

(2) **WORKSPACES**. The Workspaces Add-On Module is licensed on a CAL Basis for the number of Authorized Users set forth in Your Quotation. Each Authorized User is permitted to create as many Workspaces as desired for the purpose of sharing access to folders or files (such as by using the Outlook Add-On Module) with other User Accounts (as defined below) and/or with new User Account participants ("guests").

(3) **ACCELERATE**. The Accelerate Add-On Module is licensed pursuant to a Server License to permit use of the FAST protocol for EFT Software initiated transfers from EFT Software servers to other EFT Software servers. You may also use the FAST protocol for inbound transfers initiated from devices running the included scClient™ application to EFT Software servers, on a Concurrent Basis for that number of Authorized Users for which You have paid a separate license fee as indicated in Your Quotation. In order to facilitate FAST transfers, whether terminating at or initiated from EFT Software servers, You will be required to also purchase one Server License for the DMZ Gateway per each Server License for the Accelerate Add-On Module and designate a single EFT Site per Instance as the hub for FAST transfers via the DMZ Gateway configuration tab in the EFT Software. The Accelerate Add-On Module includes components from Data Expedition, Inc. ("DEI") and in addition to the protective provisions contained in this Agreement is specifically subject to the following additional license terms: The license to the Accelerate Add-On Module is not a sale of the Accelerate Add-On Module, including any component included therein provided by DEI, or any copy of the Accelerate Add-On Module. The Accelerate Add-On Module contains valuable trade secrets. All worldwide ownership of and all rights, titles and interests in and to the DEI provided portions of the Accelerate Add-On Module, and all copies and portions of such DEI-provided software, including without limitation, all intellectual property rights therein and thereto, are and will remain exclusively with DEI. The Accelerate Add-On Module, including any component included therein provided by DEI, may be protected, among other ways, by patent, copyright, trade secret, and trademark laws. Any license grant is limited to use of the Accelerate Add-On Module in the form provided. You will not decompile, reverse engineer, disassemble or otherwise reduce the Accelerate Add-On Module to a human-perceivable form, modify or create derivative works based on the Accelerate Add-On Module, or extract integral components of the Accelerate Add-On Module except, and then solely to the extent required to be permitted, under applicable law. You will not resell, rent, lease, or loan the Accelerate Add-On Module in whole or in part.

(4) **OTHER ADD-ON MODULES**. The following additional Add-On Modules may also be licensed to You as a Server License if set forth in the applicable Quotation. Failure to purchase a license for a specific Add-On Module causes certain EFT Software functionality to remain locked unless licensed, which can result in reduced functionality of the EFT Software as described by that Add-On Module's Documentation. These Add-On Modules include but are not limited to: Applicability Statement 2 ("AS2") Module, Auditing and Reporting Module ("ARM"), Business Activity Monitoring Module, DMZ Gateway (single and multi-site), Advanced Security Module ("ASM") within EFT Enterprise, Express Security Module ("ESM") within EFT Express, HTTPS Module, OPEN PGP Module, and the SFTP Module. If You have purchased a license for one of these Add-On Modules, You may use one copy of that Add-On Module on that number of Instances for which You have purchased a Server License as indicated in Your Quotation.

(ii) Terms Applicable To Cal Basis Licenses. Each Authorized User must have assigned to him or her a unique user ID ("User Account") and password combination for using such Add-On Module. Multiple individuals will not share a User Account. Administrators can create new User Accounts and assign Authorized User status to User Accounts. A new Authorized User may be designated in replacement of a User Account who no longer requires use of, and will no longer use, the Add-On Module which is limited with respect to the number of Authorized Users (and such replaced individual will no longer be deemed an Authorized User), but the administrator must not designate more Authorized Users than such number of Authorized Users for which a license has been purchased. For example, if You purchased a license for 100 Authorized Users, then up to 100 User Accounts would be permitted to access the Add-On Module as an Authorized User. If the number of Authorized Users for which You have a CAL Basis license is less than the number of Authorized Users the administrator has designated in the EFT Software, You will need to either purchase an additional license for each additional Authorized User or terminate the Authorized User usage by the User Accounts for which You do not have an active CAL Basis license.

(iii) Standby or Development License. If You have purchased a license to use the Server Program and/or one or more of the Add-On Modules on a non-production basis, then You may use the Server Program and/or such Add-On Module(s) so licensed only as follows:

(1) STANDBY LICENSE. One (1) copy as a standby Instance that is not processing traffic or doing work of any kind except in the event that, and only for so long as, the primary production Instance upon which the Server Program license is associated is offline. The standby license will permit usage of a manual, automatic, or dynamic failover or recovery method, including real-time or just-in-time generation of production server instances from recovery images; provided, no two Instances may be operating concurrently in a production environment. A separate standby license is required for each logical Instance, even if those Instances do not technically exist until they are needed at the point of failover. You must purchase a standby license if You deploy the EFT Software in an active-passive scenario, whether such deployment is a logical or physical active-passive deployment. By way of example and not a limitation, if You have a recovery software tool that images a system which includes an installation of the EFT Software and You use Your standard license serial number to activate the EFT Software, and if the recovery software tool instantiates an Instance from that image as a result of the production server going offline, then You will need to purchase a standby license for that recovery Instance separate from the primary Instance.

(2) DEVELOPMENT LICENSE. One (1) copy as a development Instance (which may also be used, in the manner described in this Section 2.2(c)(iii)(2), with desktop personal computers associated with the operating system into which such Instance is loaded) used solely for testing, evaluation, or API development, so long as such Instance does not process actual traffic in a production environment, or for production purposes, or is used as a failover or standby server. The same rules regarding dynamic generation of instances that apply to standby Instances also apply to development Instances. A license is needed for each Instance, even if that Instance does not exist until it is needed or is generated from an image.

(iv) Activation. You must activate the standard license for the EFT Software by entering the serial number provided to You by Globalscape. Your failure to follow the activation procedures correctly is a material breach of this Agreement.

2.3 Documentation. Subject to the terms and conditions of this Agreement You may make and internally distribute a reasonable number of copies of the Documentation for Your use in connection with the EFT Software. You may use the Documentation solely in connection with Your license to the EFT Software.

2.4 Backups; Reassignment. Customer will have the right to make a reasonable number of copies of the EFT Software for archival and back-up purposes. To the extent a Schedule sets forth limitations on seats, users, servers, devices, or locations, Customer may periodically replace or reassign such seats, users, servers, devices, or locations during the term of license, in connection with the legitimate business purposes of Customer and its Affiliates.

2.5 Customer Affiliates. Customer may allow its Affiliates to use the EFT Software licensed and services made available to Customer hereunder for the benefit of Customer and its Affiliates, provided that Customer will be responsible for the acts and omissions of its Affiliates as if such acts and omissions were those of Customer.

### **3. Transfer.**

You may use Your EFT Software license solely for Your internal business process as contemplated by this Agreement and will not license, sub-license, sell, re-sell, rent, lease, lend, transfer, assign, distribute, time share or otherwise commercially exploit or make the EFT Software or Documentation available to any third party, other than as contemplated by this Agreement, without the prior written consent of Globalscape. You will not sell, sell access to, or sell use of the EFT Software or Documentation or utilize the EFT Software as the basis for any software as a service or application service provider solution that You offer for sale or license to third parties. You will not use the EFT Software or Documentation in connection with the provision of a service to any third party that includes file transfer or any other service that is a substitute for some or all EFT Software's functions without the prior written consent of Globalscape. You may not transfer the EFT Software license without the prior written consent of Globalscape. Any EFT Software license granted solely for an Evaluation may not be sold or transferred to another person or entity in any manner. Transfer or attempted transfer in violation of this Agreement, in whole or in part, will be void ab initio and deemed a breach of this Agreement.

### **4. Fees.**

Customer will pay to Globalscape the fees specified in the Quotation, the exhibits/appendices and mutually executed Statement(s) of Work ("SOW") attached or incorporated herein by reference, and on the Invoice issued by Globalscape to Customer. Customer will also reimburse Globalscape for any expenses as specified in the Quotation, the exhibits/appendices, SOWs or otherwise authorized by Customer in writing (including via email). Your payments will be due and payable as set forth in Your Invoice. Thereafter, unless otherwise set forth in the Invoice, full payment is due within thirty (30) days from the date You receive a statement of any amounts due for renewals of EFT Software licenses, Your M&S Plan or any other services renewals. Statements of payments due will be transmitted on the date of issuance via electronic or postal mail to the primary or billing contact listed on Your account. If Customer does not pay the fees when due, then Globalscape may, without limiting Globalscape's other rights and remedies, accelerate Customer's unpaid fee obligations under this Agreement so that all such obligations become immediately due and payable, and suspend any EFT Software licenses and services to Customer until such amounts are paid in full. All payments are non-refundable and all fees are non-cancellable. Amounts not paid when due will bear interest at 1.5% per month, or the highest non-usurious rate permitted under applicable law, whichever is less. If Globalscape is required to take legal action to collect any overdue amount, You will also pay Globalscape's reasonable costs of collection, including reasonable attorneys' fees.

Unless otherwise specified in the Quotation, all money amounts set forth herein are expressed in, and all payments to be made hereunder will be made in, United States dollars. The amounts to be paid to Globalscape hereunder will be paid as set forth herein, and are exclusive of and will be paid without deduction for any taxes, duties or payments of any kind to any third party including without limitation, sales, service, use or value added taxes. In the event that Globalscape is required to pay any amount of tax or duty, or make any payment to any third party in connection herewith, except for taxes based on Globalscape's income, Customer will promptly pay to Globalscape such amount. If Customer is required under any applicable law or regulation, domestic or foreign, to withhold or deduct any portion of the payments due to Globalscape, then the sum payable to Globalscape will be increased by the amount necessary so that Globalscape receives an amount equal to the sum it would have received had Customer made no withholdings or deductions.

## 5. Maintenance and Support.

If You purchased an M&S Plan, Globalscape will provide updates, upgrades and helpdesk support services as further described in the Globalscape Maintenance and Support Guide for Your applicable Support Tier as described at <https://www.globalscape.com/support-packages> (“Support”), as the same may be updated from time to time by Globalscape in its sole discretion. You are not obligated to subscribe to Support but may make such election on an annual basis with regard to each EFT Software license hereunder. Unless otherwise specified in the Quotation, the first annual Support term (if elected by Customer) will commence upon Your purchase of the applicable EFT Software license. Your option to not subscribe to Support will have no impact on Your EFT Software license rights under the Agreement; provided, however, to be eligible for Support, including without limitation new releases of the EFT Software, You must maintain an active M&S Plan without interruption. No updates, upgrades or helpdesk support services will be provided with respect to the EFT Software that is not covered by an active M&S Plan. If You maintain an active M&S Plan, we will provide updates and upgrades to You concurrently with release to other customers. Globalscape will work to reach out to You before the expiration of Your then-current M&S Plan, however You may contact Globalscape at any time if You would like to extend the term of Your M&S Plan. The terms for renewals of existing M&S Plans will be as set forth in the Invoice for such renewal issued by Globalscape. For Perpetual EFT Software licenses, to use the EFT Software identified as an upgrade, or new version, You must first be licensed for the EFT Software identified by Globalscape as eligible for the upgrade and have an active M&S Plan and, after upgrading, You may no longer use the EFT Software that formed the basis for Your upgrade eligibility and the license for that EFT Software will be deemed immediately terminated upon Your installation of the upgrade.

## 6. Term.

This Agreement will commence on the Effective Date specified in the Quotation and will continue for a period of three (3) years (“Initial Term”), unless earlier terminated in accordance with this Agreement. Upon expiration of the Initial Term, the Agreement will automatically renew for successive one (1) year renewal terms (each, a “Renewal Term”) unless either party provides written notice of non-renewal at least thirty (30) days in advance of the end of the then-current Term. If the term of any Statement of Work extends beyond the date on which this Agreement expires or is terminated, the Statement of Work will remain effective and will continue to be governed by the terms and conditions of this Agreement regardless of any such expiration or termination, unless and until such Statement of Work expires or is terminated in accordance with its own terms.

## 7. Confidentiality.

**7.1. Confidential Information.** “Confidential Information” means (i) all information disclosed in tangible form by one party (“Disclosing Party”) to the other party (“Receiving Party”) which is marked “confidential” or “proprietary” or similar designation; (ii) all oral and intangible information disclosed by Customer which is identified at the time of disclosure as “confidential” or “proprietary” or similar designation; (iii) any information which a reasonable person under the circumstances would believe the Disclosing Party intended to be treated as Confidential Information; (iv) the terms of this Agreement; and (v) the source code of the EFT Software, and any technical information, know-how and/or inventions disclosed by Globalscape in relation to this Agreement and the rights and licenses granted hereunder. Globalscape’s Confidential Information may include, but is not limited to information regarding Globalscape’s systems, networks, and business and technical requirements that may be disclosed in connection with the EFT Software, the Documentation, M&S Plans, any services, or this Agreement. Confidential Information does not include any information that: (a) is rightfully in the possession of the Receiving Party without an obligation of confidentiality at the time of disclosure as demonstrated by its written records; (b) before or after it has been disclosed to the Receiving Party, enters the public domain through no wrongful act of the Receiving Party; (c) is disclosed to the Receiving Party by a third party not in violation of any obligation of

confidentiality; or (d) is independently developed by the Receiving Party without use of or reference to Confidential Information of the Disclosing Party.

**7.2. Protection of Confidential Information.** The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose other than performing its obligations or exercising its rights under this Agreement and will disclose the Confidential Information of the Disclosing Party only to Receiving Party's employees and agents ("Representatives") on a "need to know" basis, provided such Representatives must have agreed, either as a condition of employment, representation or in a written agreement in order to obtain the Confidential Information, to be bound by terms and conditions no less protective of Disclosing Party than the terms of this Section 7. The Receiving Party will be liable for any of its Representatives' failure to comply with such obligation. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner as the Receiving Party protects its own confidential or proprietary information of a similar nature provided such the Receiving Party will act with no less than reasonable care. Notwithstanding the foregoing, Confidential Information may be disclosed as required by law or by order of a court of competent jurisdiction. In such event and if reasonably possible under the circumstances of disclosure, the Receiving Party will provide the Disclosing Party with prompt prior written notice of such obligation in order to permit the Disclosing Party an opportunity to take legal action to prevent or limit the scope of such disclosure.

**7.3 Return of Confidential Information.** Promptly following the expiration or termination of this Agreement, or earlier upon the request of the Disclosing Party, the Receiving Party will return to the Disclosing Party all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information. Notwithstanding the foregoing, the Receiving Party will be permitted to retain any incidental copies of the Confidential Information which are retained pursuant to the Receiving Party's standard redundancy, back-up, disaster recovery or similar processes which will instead be destroyed in accordance with the Receiving Party's standard retention policies. Any such Confidential Information retained will remain subject to the continuing confidentiality and non-use requirements contained herein.

## **8. Information Collection and Privacy.**

The EFT Software includes a feature that assigns a unique identifier to the computer upon which the EFT Software is installed based on system information. The EFT Software reports this identifier to Globalscape either when You install the EFT Software, enter Your evaluation serial number, or enter Your activation serial number, or upon the occurrence of each of these. During the Evaluation Period, EFT will contact our activation servers periodically to verify that the EFT Software is still eligible for use on an evaluation basis. The EFT Software may also identify and report to us Your Windows language identifier setting, IP address, and the date and time of installation and/or activation. Globalscape uses this information to count installations, detect piracy of the EFT Software, and develop rough statistical data regarding the geographic location of EFT Software users. Globalscape may tie this information to personally identifiable information it has about You. Globalscape may use any non-proprietary information You provide as part of obtaining support services for Globalscape's business purposes, including product support and development. Globalscape's policies related to this information are further provided in the Privacy Policy available at: <https://www.globalscape.com/company/privacy-policy>.

## **9. Restrictions.**

**9.1** You may not reduce the EFT Software to human readable (or source code) form, reverse engineer, de-compile, disassemble, merge, adapt, or modify the EFT Software or access the EFT Software in order to copy any ideas, features, content, functions or graphics of the EFT Software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. You will not (i) modify, copy or create derivative works based on the EFT Software; or (ii) create Internet "links" to or reproduce any content forming part of the EFT Software, other than for Your own internal business purposes. You may not use the EFT Software to

perform any unauthorized transfer of information, such as copying or transferring a file in violation of a copyright, in violation of any laws related to the transfer of encrypted data or for any illegal purpose. You may not utilize the EFT Software to (a) violate the law or rights of any person or entity, including sending spam, unlawful or tortious material; (b) intentionally send or store software viruses, worms Trojan horses or other harmful computer code, files, scripts, agents or programs; or (c) intentionally interfere with or disrupt the integrity of any third party system or the data contained therein.

**9.2** You may not use the EFT Software to engage in, foster, or promote illegal, abusive, or irresponsible behavior, including without limitation: (i) unauthorized access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures; (ii) monitoring data or traffic on any network or system without the express authorization of the owner of the system or network; (iii) using the EFT Software to engage in, without limitation, mail bombing, flooding, deliberate attempts to overload a system and broadcast attacks; (iv) using an Internet account or computer without the owner's authorization; (v) using any false, misleading, or deceptive TCP-IP packet header information in an email; (vi) using the EFT Software to distribute software that covertly gathers information about a user or covertly transmits information about the user; (vii) any conduct that is likely to result in retaliation against Globalscape or its host, or their respective employees, officers or other agents, including engaging in behavior that results in any server being the target of a denial of service attack (DoS); or (viii) the transmittal or storage of any content or links to any content that Globalscape reasonably believes: (a) constitutes, depicts, fosters, promotes or relates in any manner to child pornography, bestiality, or non-consensual sex acts; (b) is excessively violent, incites violence, threatens violence, or contains harassing content or hate speech; (c) is unfair or deceptive under the consumer protection laws of any jurisdiction, including chain letters and pyramid schemes; (d) is defamatory or violates a person's privacy; (e) creates a risk to a person's safety or health, creates a risk to public safety or health, compromises national security, or interferes with an investigation by law enforcement; (f) improperly exposes trade secrets or other confidential or proprietary information of another person; (g) is intended to assist others in defeating technical copyright protections; (h) infringes on another person's copyright, trade or service mark, patent, or other property right; (i) promotes illegal drugs, violates export control laws, relates to illegal gambling, or illegal arms trafficking; (j) is otherwise illegal or solicits conduct that is illegal under laws applicable to Customer, Globalscape or its host; (k) the upload, download, publishing, distribution, or otherwise copying or use in any manner of any text, music, software, art, image, or other work protected by copyright law unless sender has been expressly authorized by the owner of the copyright for the work to copy the work in that manner; or sender is otherwise permitted by established copyright law to copy the work in that manner; or (l) is otherwise malicious, fraudulent, or may result in retaliation against Globalscape or its host by offended viewers or recipients, or is intended to harass or threaten.

## **10. Security.**

The EFT Software creates a means for others to gain access to Your servers and/or computers. Although we have taken commercially reasonable measures to prevent unauthorized persons from gaining access via the EFT Software, we cannot foresee or control the actions of third parties. Therefore, use of the EFT Software will make You vulnerable to security breaches that You might not otherwise face and could result in the loss of Your privacy or property. You agree that Globalscape is not liable to You for security breaches resulting from Your use of the EFT Software or otherwise, except for such security breaches found to be a result of Globalscape's willful misconduct or gross negligence. You are solely responsible for the security and confidentiality of passwords by You and Your Authorized Users.



## **11. Audit.**

You agree that on Globalscape's request You will certify in writing Your compliance with the terms of this Agreement, including Your use not exceeding the number of computers and users licensed. Globalscape reserves the right to invoice and collect applicable fees at Globalscape's standard, undiscounted rates for any unlicensed use in addition to other remedies available under law or in equity or pursuant to this Agreement. You further agree that Globalscape may during normal business hours and with reasonable prior notice, request and gain access to Your premises for the limited purpose of conducting an inspection to determine and verify Your compliance with this Agreement. The inspection will be conducted no more than once per year and in a manner not intended to disrupt Your business and will be restricted in scope and duration to that reasonably necessary to achieve its purpose. This Section will survive for two (2) years after expiration or termination of the Agreement.

## **12. Termination.**

Either party may terminate this Agreement if the other party materially breaches any provision of this Agreement and does not cure the breach within thirty (30) days after receiving written notice thereof. In addition, Customer may terminate this Agreement at any time, for any reason or no reason, upon fifteen (15) days written notice to Globalscape, subject to Customer's payment of all unfulfilled payment obligations hereunder including, without limitation, the license fees due for the entire Term. Globalscape may terminate this Agreement at any time, for any reason or no reason, upon ninety (90) days written notice to Customer. Upon termination of this Agreement for any reason, You must uninstall and destroy or discontinue access to the EFT Software and Documentation and certify to Globalscape that You have complied with this obligation. The termination of this Agreement does not limit Globalscape's other rights it may have by law. The provisions in Sections 4, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18 19 and 20 will survive the termination of this Agreement.

## **13. Intellectual Property.**

You acknowledge that You have only the limited, non-exclusive right to access and use the EFT Software and Documentation as expressly stated in this Agreement and that Globalscape retains all right, title and interest in the intellectual property rights and technology in the EFT Software and Documentation and all other rights not expressly granted. The rights granted hereunder are not a sale of the EFT Software and/or Documentation or any copy of the EFT Software, Documentation or any part thereof. You agree not to remove or modify any copyright, trademark, patent, or other proprietary notices that appear, on, in or with the EFT Software and/or Documentation. The EFT Software and Documentation and all derivatives thereof are protected by United States copyright, patent and trademark law, and rights granted by international treaties related to intellectual property rights. All rights reserved.

## **14. Export Restrictions.**

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that the EFT Software and/or Documentation may be used, in connection with the proliferation of nuclear, chemical or biological weapons or missiles. You will indemnify and hold Globalscape harmless in connection with any breach of this Section.

## **15. No Warranties.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE EFT SOFTWARE, DOCUMENTATION, ANY LICENSES TO EFT SOFTWARE, ANY MAINTENANCE AND SUPPORT SERVICES, AND ANY OTHER SERVICES PROVIDED HEREUNDER (COLLECTIVELY REFERRED TO IN THIS SECTION 15 AND IN SECTION 16 BELOW AS "EFT SOFTWARE AND/OR SERVICES") ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, PERFORMANCE AND NONINFRINGEMENT. IF APPLICABLE LAW REQUIRES A WARRANTY, THE REQUIRED WARRANTY IS LIMITED TO NINETY (90) DAYS FROM WHEN ACCESS TO EFT SOFTWARE AND/OR SERVICES IS FIRST MADE AVAILABLE TO YOU. COMPUTER PROGRAMS ARE INHERENTLY COMPLEX, AND EFT SOFTWARE AND/OR SERVICES MAY NOT BE FREE OF ERRORS. EFT SOFTWARE AND/OR SERVICES ARE PROVIDED WITH ALL FAULTS AND THE ENTIRE RISK AS TO SATISFACTORY QUALITY, PERFORMANCE, ACCURACY AND EFFORT IS WITH YOU. GLOBALSCAPE DISCLAIMS ALL LIABILITY FOR ANY ACTION THAT YOU, YOUR DESIGNEE, OR YOUR AGENTS MIGHT TAKE IN CONNECTION WITH, OR IN RELIANCE UPON, THE TRANSMISSION OR RECEIPT OF ANY MESSAGE USING EFT SOFTWARE AND/OR SERVICES. SOME STATES DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES SO THESE LIMITATIONS MAY NOT APPLY TO YOU.

EFT SOFTWARE AND/OR SERVICES, INCLUDING ALL OF THE ADD-ON MODULES, ARE NOT FAULT-TOLERANT AND ARE NOT DESIGNED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, INCLUDING WITHOUT LIMITATION, IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT OR OTHER VESSEL NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC OR OTHER VESSEL CONTROL, WEAPONS SYSTEMS, DIRECT LIFE-SUPPORT MACHINES, OR ANY OTHER APPLICATION IN WHICH THE FAILURE OF EFT SOFTWARE AND/OR SERVICES COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE (COLLECTIVELY, "HIGH RISK ACTIVITIES"). IN FURTHERANCE OF THE DISCLAIMER OF THE IMPLIED WARRANTY OF FITNESS CONTAINED ABOVE, ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES IS EXPRESSLY DISCLAIMED. YOU MAY NOT USE EFT SOFTWARE AND/OR SERVICES IN ANY SITUATION WHERE FAILURE OR FAULT COULD LEAD TO DEATH OR SERIOUS BODILY INJURY OF ANY PERSON, OR TO PHYSICAL PROPERTY OR ENVIRONMENTAL DAMAGE. FOR EXAMPLE, YOU MAY NOT USE, OR PERMIT ANY OTHER PERSON TO USE, EFT SOFTWARE AND/OR SERVICES IN CONNECTION WITH AIRCRAFT OR OTHER MODES OF HUMAN MASS TRANSPORTATION, NUCLEAR OR CHEMICAL FACILITIES, OR CLASS III MEDICAL DEVICES UNDER THE FEDERAL FOOD, DRUG AND COSMETIC ACT.

## **16. Limitation of Liability.**

NEITHER GLOBALSCAPE NOR ITS THIRD PARTY LICENSORS WILL BE LIABLE TO YOU FOR ANY PUNITIVE, CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF THE DELIVERY, PERFORMANCE, OR USE OF EFT SOFTWARE AND/OR SERVICES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, DATA, GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, SECURITY BREACHES RESULTING IN DISCLOSURE OF CONFIDENTIAL INFORMATION OR ANY AND ALL OTHER DAMAGES OR LOSSES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. UNLESS APPLICABLE LAW PROVIDES OTHERWISE, THE LIABILITY OF GLOBALSCAPE AND ITS THIRD PARTY LICENSORS FOR ANY CLAIM RELATED TO EFT SOFTWARE AND/OR SERVICES OR OTHERWISE UNDER OR IN CONNECTION WITH THIS AGREEMENT, WHETHER IN CONTRACT, TORT, OR ANY OTHER THEORY OF LIABILITY WILL NOT EXCEED THE GREATER OF U.S. \$100.00 OR THE FEES PAID BY YOU UNDER THIS AGREEMENT FOR EFT SOFTWARE AND/OR SERVICES IN THE TWELVE (12) MONTH

PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH THE CAUSE OF ACTION GIVING RISE TO SUCH LIABILITY AROSE. MULTIPLE CLAIMS WILL NOT EXPAND THIS LIMITATION.

## **17. U.S. Government.**

If You are acquiring the EFT Software licenses and Documentation on behalf of any unit or agency of the United States Government, then the following provisions apply. The EFT Software and Documentation are (i) existing computer software and documentation, and were developed at private expense, (ii) a trade secret of Globalscape and its licensors for all purposes of the Freedom of Information Act, (iii) "commercial computer software" and "commercial computer documentation" subject to limited utilization as expressly stated in this Agreement, (iv) in all respects proprietary data belonging to Globalscape and its licensors, and (v) unpublished and all rights are reserved under the copyright laws of the United States. The EFT Software and Documentation are licensed and provided only with "Restricted Rights" and the use, duplication, reproduction, release, modification, disclosure or transfer of the EFT Software and Documentation is restricted in accordance with Federal Acquisition Regulation ("FAR") 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7202 for military agencies. The EFT Software and Documentation are commercial computer software and commercial computer software documentation. The manufacturer/publisher is Globalscape, Inc., 4500 Lockhill-Selma, Suite 150, San Antonio, Texas, 78249-2073, USA.

## **18. Publicity.**

Notwithstanding anything in this Agreement to the contrary, Globalscape may identify You as a customer of Globalscape and Your company name, logos and other marks in press releases, general advertising materials, case studies, and other promotional materials, provided that Globalscape will include protective legends necessary to protect Your rights in and to Your trademarks, service marks, or copyrighted materials.

## **19. Indemnification.**

19.1 Each party ("Indemnifying Party") will, at its own expense, indemnify, defend and hold harmless the other party and its Affiliates, and its and their officers, directors, employees and agents (collectively the "Indemnified Party") from and against any claims, actions, liabilities, damages, costs or expenses, including reasonable attorneys' fees and costs incurred in defending against or settling third party claims ("Claims") to the extent based on or arising as a result of: (i) the Indemnifying Party's grossly negligent acts or omissions in performance under the Agreement that cause personal injury or property damage; and/or (ii) the Indemnifying Party's violations of applicable law.

19.2 The party seeking to be indemnified will give prompt written notice to the other party of the Claim against which it seeks to be indemnified and will provide the Indemnifying Party, at the Indemnifying Party's expense, with the assistance reasonably necessary for the defense and settlement of the Claim. The failure by the Indemnified Party to timely furnish to the Indemnifying Party any notice required to be furnished under this Section 19 will not relieve the Indemnifying Party of its obligations under this Section 19, except to the extent such failure materially and adversely prejudices the ability of the Indemnifying Party to defend such matter. The Indemnifying Party will have the right to control and direct the investigation, defense, and settlement of each such Claim. The Indemnified Party may participate in the defense of the Claim by counsel of its own choosing, at its own cost and expense, on a strictly monitoring basis. The Indemnifying Party will not enter into any settlement or resolution of any Claim that would constitute an admission of guilt or liability on the part of the Indemnified Party, without the Indemnified Party's prior written express consent, which will not be unreasonably withheld, delayed, or conditioned. The Indemnifying Party will not be liable for any settlement of a Claim effected without its written consent, which consent will not be unreasonably withheld, delayed, or conditioned.

## 20. General.

20.1. General. The laws of the State of Texas, excluding its conflicts laws, will govern this Agreement, the rights and obligations of the parties hereto, the entire relationship between the parties hereto, and all matters arising out of or relating to this Agreement. The parties expressly exclude the application of the United Nations Convention on Contracts for the International Sale of Goods and UCITA (the Uniform Computer Information Transactions Act) as it may be enacted in the applicable jurisdiction. Customer agrees that this Agreement will be fully performable in Bexar County, Texas and submits to the exclusive jurisdiction of, and agrees that venue is proper in the state or federal courts located in Bexar County, Texas in any legal action or proceeding relating to this Agreement. Globalscape may seek injunctive relief in any court to prevent imminent harm. If either party engages outside counsel to enforce this Agreement, and in any action or proceeding between the parties relating to this Agreement, the enforcing or prevailing party will be entitled to recover its reasonable attorneys' fees. In the case of an action of proceeding and any appeal in connection therewith, such attorneys' fees, as well as the prevailing party's other costs and expenses, will be awarded in addition to any other relief awarded or granted. This Agreement may only be modified by a written document signed by Globalscape and You. No Globalscape authorized provider, marketplace, dealer or distributor is authorized to change the terms of this Agreement. If any provision of this Agreement is found to be void or unenforceable, then such provision will be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable when applied to such facts or circumstances, with the objective of achieving as nearly as legally possible the same effect, and the remainder of this Agreement will continue in full force and effect. No waiver of any term or right in this Agreement will be effective unless in writing, signed by an authorized representative of the waiving party. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. Failure to exercise or delay in the exercise of any right or remedy under this Agreement will not operate as a present or future waiver thereof. The express waiver by either party of any provision, condition or requirement of this Agreement will not constitute a waiver of any future obligation to comply with such provision, condition or requirement. This Agreement is in the English language only, which language will be controlling in all respects. No translation, if any, of this Agreement into any other language for convenience or to meet local requirements will be of any force or effect in the interpretation of this Agreement or in determination of the interests of either Party hereto. Furthermore, all correspondence, notices, claims, suits and other communication between the Parties hereto will be written or conducted in English. It is the express wish of the parties that this Agreement and/or any related documents have been drawn up in a language other than French. French translation: Les parties aux présentes confirment leur intention que cette convention ainsi que tous les documents afférents soient rédigés dans la langue anglaise. (Translation: "The parties confirm that this Agreement and all related documentation is and will be in the English language.")

20.2 Force Majeure. Except with respect to any payment to be made to Globalscape hereunder, neither party will be liable for any failure, deficiency or delay in the performance of its obligations under this Agreement due to any force majeure, which will include but not be limited to any storm, flood, fire, aircraft damage, explosion, electrical or communication line failure, disturbance, war or military action, acts of terrorism, Government act or administrative delay, equipment failure or non-delivery, inability to obtain materials or any cause or matter whatsoever not within the reasonable control of such party. In the event of such a force majeure, the affected party will be entitled to a reasonable extension of time for the performance of its obligations under this Agreement.

20.3 Independent Contractors. The parties are independent contractors. Nothing contained herein or done pursuant to this Agreement will constitute either party the agent of the other party for any purpose or in any sense whatsoever or constitute the parties as partners or joint venturers.

# GLOBALSCAPE

20.4 Construction. This Agreement will be construed without regard to any presumption or rule requiring construction against the drafting party. Each of the individuals executing this Agreement on behalf of a party individually represents and warrants that he or she has been authorized to do so and has the power to bind the party for whom they are signing.

20.5 Assignment. Customer will not have the right or ability to assign or transfer (whether by merger, operation of law or otherwise) this Agreement, in whole or in part, including without limitation any obligations or rights under this Agreement without the prior written consent of Globalscape, which consent will not be unreasonably withheld. A change of control of Customer will be deemed an assignment for purposes of this Section. Globalscape may assign or transfer its rights and obligations under this Agreement, without Customer's consent, to a Globalscape affiliate or in connection with any merger, consolidation, sale of all or substantially all of Globalscape's assets or equity, reorganization, or any similar transaction (whether by merger, operation of law or otherwise).

20.6 Notices. Notices under this Agreement will be in writing and delivered by nationally recognized overnight delivery service or by first class certified or registered mail, return receipt requested, postage prepaid to Globalscape at 4500 Lockhill-Selma Road, Suite 150, San Antonio, TX 78249-2073 and to You to the primary or billing contact listed on Your account.

20.7 Counterparts. This Agreement may be executed in one or more counterparts, either manually or via electronic or digital signature, each copy of which will be deemed an original and all of which, when taken together, will constitute one and the same instrument.

20.8 Entire Agreement. This Agreement, including the Quotation, and the exhibits/appendices and Statement(s) of Work attached or incorporated herein by reference, constitute the complete and exclusive agreement between Globalscape and Customer with respect to the subject matter hereof, and supersede all previous and contemporaneous agreements and understandings, whether oral or written, between the parties with respect to the subject matter hereof. Any purchase order or similar document received from Customer will be for billing reference only and, notwithstanding any terms and/or conditions set forth therein, such document will not take precedence over this Agreement in any manner whatsoever, and none of the terms or conditions of Customer's purchase order or similar document will be applicable. In the case of a conflict between this Agreement and the Quotation and any fees set forth on the Globalscape website, the Quotation will control.

20.9 Questions

**If You have questions concerning this Agreement, or if You desire to contact Globalscape, please contact Globalscape by mail at: 4500 Lockhill-Selma, Suite 150, San Antonio, Texas, 78249-2073 USA, by telephone at: +1 (210) 308-8267, or by electronic mail to [legal@Globalscape.com](mailto:legal@Globalscape.com).**